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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,972	04/12/2001	Kevin Bentley McKay	OSI-0101	3837
7590	04/15/2004		EXAMINER	
Law Office of Dale B. Halling, LLC 24 S. Weber Street, Suite 311 Colorado Springs, CO 80903			IQBAL, KHAWAR	
			ART UNIT	PAPER NUMBER
			2686	

DATE MAILED: 04/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/833,972

Applicant(s)

MCKAY, KEVIN BENTLEY

Examiner

Khawar Iqbal

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3,7,8,10,11,14-17 and 19 are rejected under 35 U.S.C. 102(e) as being unpatentable by Koshima et al (US 6415155).

3. Regarding claim 1 Koshima et al teaches an emergency command and control system, comprising (abstract):

a plurality of positioning subsystems (50,60), each of the plurality of positioning subsystems having a receiver and a transmitter, the plurality of positioning subsystems transmitting a positioning signal (col. 7, lines 44-58);

a wearable tag (7) capable of receiving the positioning signal from several of the plurality of positioning systems, the wearable tag transmitting a tag position (col.7, lines 54-67, col.8, lines 57-61); and

a console (1) containing a computer (1A) and a receiver capable of receiving the tag position (col. 7, line 63-col. 8, line 11, col. 8, lines 48-60).

Regarding claim 10 Koshima et al teaches a method of operating an emergency command and control system, comprising the steps of (abstract):

determining a position of a plurality of positioning subsystems (col. 7, lines 44-58);

transmitting a position signal from each of the plurality of positioning subsystems (col. 7, lines 54-67);

receiving the position signal from several of the plurality of positioning subsystems at a wearable tag (col. 7, line 63-col. 8, line 11, col. 8, lines 48-60);

calculating a tag position (col. 7, line 63-col. 8, line 11, col. 8, lines 48-60).

Regarding claims 15 and 19 Koshima et al teaches an emergency command and control system, comprising (abstract):

a wearable subsystem transmitting and receiving a positioning signal (col. 7, lines 44-58); and

a console, having a directional antenna, transmitting and receiving the positioning signal and calculating a wearable subsystem position, the console displaying (col. 7, lines 10-11) the wearable subsystem position on a display (col. 7, line 59-col. 8, line 11, col. 8, lines 48-60).

Regarding claims 2 and 17 Koshima et al teaches wherein each of the plurality of positioning subsystems has a time modulated receiver (col. 4, lines 25-39, col. 5, lines 5-67).

Regarding claims 3, 14 Koshima et al teaches wherein the transmitter in each of the plurality of positioning subsystems uses a time modulated transmission system (col. 4, lines 25-39, col. 5, lines 5-67).

Regarding claims 7 and 16 Koshima et al teaches wherein the console includes a

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time modulated receiver (col. 4, lines 25-39, col. 5, lines 5-67).

Regarding claims 8 and 11 Koshima et al teaches wherein the console displays a location of the wearable tag (col. 7, lines 10-11).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-6,9,12,13,18,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koshima et al (US 6415155), and further in view of McCarthy et al (US20020196131).

Regarding claims 4-6,9,12,13,18-20 Koshima et al does not specifically teach wherein the wearable subsystem transmits an audible alarm when the wearable subsystem has not moved for a predetermined period of time.

In an analogous art, McCarthy et al wherein the wearable subsystem transmits an audible alarm when the wearable subsystem has not moved for a predetermined period of time (paragraph # 00009). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Koshima et al by specifically adding feature audible alarm when the wearable subsystem has not moved for a predetermined period of time in order to enhance

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system performance of the mobile system purpose of increasing efficiency as taught by McCarthy et al.

***Response to Arguments***

6. Applicant's arguments filed 2-13-2004 have been fully considered but they are not persuasive. The examiner has thoroughly reviewed applicant's arguments claim 1-20 but firmly believes the cited references to reasonable and properly meets the claimed limitations. Applicant's primary argument was that the wearable tag (7) does not transmitting a tag position. In regard to applicant's arguments against Koshima et al, the examiner considers Koshima et al to merely teach mobile terminal 7 can be configured to include position information, and carry out the computation for position identification. The result of the identified position (for example, coordinates and the like) can be sent to personal computer 1A (col. 8, lines 57-61). Applicant's other argument was that subsystems has time modulated receiver and subsystems uses a time modulated transmission system. The Personal handyphone system (PHS) is based on time division multiple access (TDMA) frequency division multiple access (FDMA) technologies similar to the TDMA-base North American Digital Cellular (NADC) system in the U.S. Koshima et al teaches uses a private PHS network (col. 7, lines 44-53, figs. 2-3). In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

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the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In response to applicant's argument that is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). Applicant should submit an argument under the heading "Remarks" pointing out disagreements with the examiner's contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### ***Conclusion***

**7 THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khawar Iqbal whose telephone number is 703-306-3015.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MARSHA D BANK-HAROLD can be reached on 703-305-4379. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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